

REMARKS

Applicants are presenting this paper in response to the Examiner's Action mailed May 17, 2006. In that action, claims 15-21 were found objectionable as having the informalities as pointed out by the Examiner in paragraph 2 spanning pages 2 and 3 of the Action, claims 15-21 and 23 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention, claims 1 and 22 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,507,507 to Davidson, claims 1 and 22 were rejected under 35 USC 102(e) as being anticipated by US Patent No. 6,644,674 to Simard, claims 2-14 were indicated as containing allowable subject matter but were objected to as being dependent on a rejected base claim, and claims 15-21 and 23 were indicated as containing allowable subject matter if rewritten or amended to overcome the claim objections and corresponding rejection under 35 USC 112, second paragraph.

By this paper, applicants have amended claim 1 to include the allowable recitations of claim 2, deleted claim 2, amended claims 3 and 13 to change their dependency from now cancelled claim 2 to now amended claim 1, and amended claim 15 to eliminate the informalities noted on pages 2-3 of the Examiner's Action.

In the Examiner's Action mailed May 17, 2006, various objections and rejections were made:

Objection to claims 15-21 were raised on the basis that "conventional" shopping carts had not been positively recited, leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and "conventional" shopping carts. The Examiner suggested removing the quotes around the word "conventional" and this has been done.

Objection was also raised regarding claims 15-21 on the basis that the recitation of the "horizontally spaced apart" parallel rods attached to the handle member" rendered the claim unclear. Applicants believe they have repaired this by now reciting that the handle member includes "two horizontally arranged, vertically spaced apart rods attached to the handle member".

In connection with the immediately above noted objection, the Examiner rejected Claims 15-21 under 35 USC 112, second paragraph, as being indefinite. Applicants believe that the proposed amendment to claim 15 negates the basis for this rejection.

As to the claim 15 objection and rejection on the basis that it is improper for applicants to be reciting CONVENTIONAL carts, applicants continue to take the position that the specification clearly defines a "conventional shopping cart" with not only drawing figures showing what is meant by a "conventional shopping cart", but with also a detailed description of such a "conventional shopping cart". Further, there is ample evidence in the published records of the US Patent Office that describing an object as "conventional" is clearly permitted. **As of June 22, 2005, the US Patent and Trademark Office had issued 20,987 US patents in which one or more claims in each of the patents contained the word "conventional", and several US patents of that collection of 20,000 specifically pertain to shopping carts and contain claims in which "conventional shopping carts" have been recited, as for example, claim 9 in US Patent No. 4,120,384 to Choy, claim 1 in US Patent No. 5,441,285 to Russell, Jr. et al. and claim 5 in US Patent No. 5,961,133 to Perry. And in the Perry patent, various claims recite a comparison of structural features on the inventive cart with similar structural features on "conventional shopping carts", as for example claims 5 and 6 of the Perry patent which recite:**

"5. A shopping cart as claimed in claim 1 wherein the overall width of said basket and said wheeled undercarriage are about the same as conventional shopping carts, such that said shopping cart may replace said conventional shopping carts without requiring any modifications to the retail outlet that employs said conventional shopping carts." [underlining added for emphasis]

"6. A shopping cart as claimed in claim 1 wherein the overall dimensions of said basket and said wheeled undercarriage are about identical to a more conventional shopping cart, such that, in combination with said rotating handle, the means to interchangeably nest said shopping cart with said conventional shopping cart in a relatively compact manner is also provided." [underlining added for emphasis]

Surely, it cannot be that the US Patent and Trademark Office has issued over 20,000 invalid patents – that is, patents that are invalid because they contain claims that recite "conventional" structure and are therefore indefinite. Put another way, it is difficult to accept the fact that in over 20,000 instances, Examiners erred in issuing patents with indefinite claims because the claims contain recitations that include the word "conventional".

As stated by applicants previously, there appears to be no reasonable justification for the rejection of the claims in the present application that recite "conventional" structure, as being indefinite under 35 USC 112, second paragraph, while over 20,000 other applications previously examined by the US PTO have passed the test of 35 USC 112, second paragraph, and have been issued, even though they too contained claims reciting "conventional" structures – including the three US patents identified above to Choy, Russell, Jr. et al., and Perry which specifically pertain to shopping carts.

For all the foregoing reasons, withdrawal of the rejection of claims 15-21 and 23 is respectfully solicited.

With respect to the rejection of claims 1 and 22 under 35 USC 102(b) as being anticipated by the US patent to Davidson (USP 5,507,507), and the rejection of claims 1 and 22 under 35 USC 102(e) as being anticipated by the US patent to Simard (USP 6,644,674), applicants believe that the incorporation of the allowable recitations of claim 2 into claim 1 render the anticipation rejections noted above inapplicable. Therefore, applicants respectfully solicit reconsideration and withdrawal of this rejection for the foregoing reasons.

Accordingly, applicants now respectfully solicit allowance of claims 1 and 3-23, which constitute all the claims remaining in this application.

For all the foregoing reasons, applicants respectfully urge that the rejections of the claims in this application either under 35 USC 102(b) as being anticipated by Davidson or under 35 USC 103(a) as being unpatentable over Davidson are untenable and must be withdrawn. Further, in view of the amendments proposed hereinabove, all other objections and rejections have been obviated, and it is the position of applicants that these claims should be re-evaluated and found to satisfy the requirements of 35 USC 112, first and second paragraphs, and to be patentable over the prior art of record in compliance with the requirements of 35 USC 102 and 103.

Whereby applicants solicit allowance of the claims now in this application.

Respectfully submitted on behalf of applicants,

A handwritten signature in black ink, appearing to read "Terrell P. Lewis". The signature is fluid and cursive, with the first name "Terrell" and last name "Lewis" clearly distinguishable.

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